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Reasonable Fee and Professional Discipline

William C. Romell

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Profession: . . . A calling requiring specialized knowledge and often long and intensive preparation including instruction in skills and methods as well as in the scientific, historical, or scholarly principles underlying such skills and methods, maintaining by force of organization or concerted opinion high standards of achievement and conduct, and committing its members to continued study and to a kind of work which has for its prime purpose the rendering of a public service.[1]

FOR CENTURIES lawyers have considered themselves to be members of an unquestionably honorable profession, motivated by a conscious sense of duty. They hold themselves to be possessed of sensitivity to the needs and problems of society, to the established values of tradition, and to the inherent privileges and rights of the individual citizen.

Needless to say, such standards of behavior and dedication are almost superhuman—and perforce are slighted now and again by members of the Bar in their preoccupation with the exigencies of their daily work.

The respect and awe with which the learned man of the Middle Ages was revered by an ill-educated, physically oppressed populace has been largely displaced in our time by a pervasive atmosphere of skepticism. The philosophical and ritualistic mysteries which have long enshrouded the profession of law are easily misinterpreted by a tough-minded public as manifestations of condescension if not disdain.

Occasionally the lawyers' insistence upon the utter rightness of the law and the infallibility of its practitioners have provided social critics with opportunity for witticism, to the delight of the general public.[2]

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[1] Webster's Third New International Dictionary Unabridged, G. & C. Merriam Co. (1961).

[2] Epitomized by the pomposity of the deathless lines "The Law is the true embodiment of everything that's excellent. It has no kind of fault or flaw, and I, my Lords, embody the Law." Gilbert, Sir William S., from his libret-

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It is true that certain aspects of the legal profession are a mystery to the majority of laymen. A client may not appreciate the nice exercise in disciplined thought by which his attorney negotiates a triumph of litigation. He ordinarily is unable to comprehend the legal complexities surrounding the facts of his case. He is, in all probability, unaware of the demands which his controversy places upon his counsel's ability, knowledge, judgment, and ingenuity. But he does understand and appreciate the value of his money—and that is the subject of this article. The client balances the material results of the efforts of his attorney against the fee which counsel charges as compensation for his services, and every such exercise of a client's judgment carries potential impetus to *Mene, Mene, Tekel Upharsin*[3] against the attorney and his reputation.

I have not concerned myself with those instances in which an excessive fee has been exacted through deliberate fraud or misrepresentation by the attorney. Nor have I speculated upon the problems of conversion or misappropriation by an attorney of his client's funds under the guise of exacting his fee, or upon cases involving an alleged breach of a contract which stipulates a fixed fee for services of counsel, or upon charges of champerty or maintenance. The question propounded by this article is—what exactly is the "reasonable" fee, and conversely under what conditions may a fee be adjudged so unreasonable that the legal profession may administer justifiable discipline to the attorney charging such a fee?

The Philosophy of Fees

It might seem to an objective observer that the practice of law, insofar as it provides its practitioners with their economic livelihood, is a commercial expedition. Financial well-being and independence, at least relative to the standards of the community, are significant stimuli to the development of high per-

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to for the operetta Iolanthe, Act I, Entrance of the Lord Chancellor. First produced in collaboration with Sir Arthur S. Sullivan at London, England, in 1882.

[3] Roughly translated as "Thou art weighed in the balance and found wanting";—the words, written on the palace wall by a disembodied man's hand, by which God condemned King Belshazzar for his godlessness. Belshazzar was subsequently slain by the victorious King Darius of the Medes, and his former kingdom divided. See the Old Testament of the Holy Bible, Book of Daniel, Chapter 5.

sonal integrity. Nevertheless, whenever the question of fee determination arises, the ancient spectre of financial sacrifice appears simultaneously, awaiting as its proper due the unhesitant embrace of all members of the profession.

> In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.[4]
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> . . . attorneys owe a public duty to the court and to the public to aid in the administration of justice, and that while the laborer is worthy of his hire, nevertheless it must be borne in mind that the law is a profession whose basis is public service; that it exists to promote justice and to facilitate the actions of courts of justice, that it is not a money-making profession, nor was it ever intended to be such.[5]
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> Although it may have been to the personal benefit of the lawyers to keep this litigation going, the settlement effected is a fresh demonstration that the leaders of our Bar are motivated by a desire for professional service rather than mere selfish gain.[6]

These last exhortations of court and canon can best be compromised with the facts of Twentieth Century economics by giving full weight to the word "mere." The profession continues to honor its responsibility toward public service and justice, with a realization that the professional powers of lawyers do represent a potential for misdirected efforts in the interests of personal avarice. The profession's philosophy of compensation is simply this—the Law is primarily devoted to public service and perpetuation of justice, but it allows its practitioners a compensation commensurate with their professional efforts.

Measures of the Reasonable Fee

An attorney has the prerogative of establishing the fee which he will charge to each individual client for the professional services and counsel which he renders on behalf of the interests of such client.[7]

Courts and text writers are unanimous in their opinion that an attorney is entitled to receive the reasonable value of his

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[4] Canon 12, in part, of the Canons of Professional Ethics of the American Bar Association.

[5] Prather v. First Presbyterian Society, 13 Ohio N. P. (N. S.) 169, 185, 25 Ohio Dec. 613 (C. P., 1912).

[6] Santen v. The United States Shoe Co., 25 Ohio N. P. (N. S.) 363, 374 (Superior Ct. of Cincinnati, 1925).

[7] Goldstone v. State Bar, 214 Cal. 490, 6 P. 2d 513, 80 A. L. R. 701 (1931).

services, in the absence of a formal contract, or a statute which fixes the amount of his compensation[8].

Are there any judicial or administrative guides or standards which will aid the attorney in his determination of the reasonable fee under the particular circumstances of each case? Most assuredly—examples of approved and recommended measures of reasonable compensation are many and varied, although some are patently general. For example, lawyers are advised to avoid the imposition of charges which either overestimate or undervalue their advice and services.[9]

The courts have proved prolific in providing the lawyer with more specific mesures which, in varying circumstances, may be applicable to fee determination. An attorney may properly consider the time which he has devoted to the interests of his client; the nature, intricacy, character, difficulty, and novelty of the legal questions raised by the facts of a case; the amount of money, or the value of property or other interests at issue; the attorney's personal standing and professional reputation; the actual benefits accruing to the client as a result of his services and counsel; the attorney's loss of opportunity for other remunerative employment resulting from his occupation with a client's matters; the character and aggressiveness of professional opposition to litigation; the degree of responsibility assumed by an attorney in conducting a client's case—whether he was the sole attorney, or merely assisting counsel; the degree of certainty or contingency upon which his compensation depended; the doubtfulness of his client's claim at law; whether or not the services and counsel which he provided for a client were in fact necessary and essential to the satisfactory conclusion of the cause; and, in a growing number of instances, the client's financial ability to pay.[10]

Other cases have set forth and approved such diverse measures as the amount of compensatory allowance granted or approved by courts, or customarily charged within the community,

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[8] Annot. 143 A. L. R. 672 (1943).

[9] *Supra* note 4.

[10] See Annot. 143 A. L. R. 672 (1943) and Annot. 56 A. L. R. 2d 13 (1957) for an exhaustive review of these and other measures of attorneys' compensation. Also see In Re Habant, 32 Ohio L. Abs. 446 (C. P., 1940); Prather v. First Presbyterian Society, *supra,* note 5; Holmes v. Holland, Ohio Dec. Rep. 768 (C. P., 1893); and Kittredge v. Armstrong, 11 Ohio Dec. Rep. 661 (Super. Ct. Cinc., 1892) for judicial exposition of a number of these measures of compensation.

for legal services of a similar kind;[11] specific fees paid by clients in other cases involving similar services;[12] whether the attorney's employment was merely casual or for an established and regular client;[13] the minimum level of fees established by a local Bar association fee schedule;[14] current economic trends, exemplified by price and standard of living indices;[15] and, in a few rare instances, the attorney's professional overhead expenses.[16]

The very number and variety of these possible measures of proper legal compensation serve to illustrate the difficulty of defining the reasonable fee. Attorneys exhibit a general reluctance to pontificate upon the reasonableness or unreasonableness of a fee charged by one of their number and contested by his client, because of the subjective nature of such fees. Many courts are aware of this reluctance. In at least one suit filed by an attorney to collect his fee from a client unwilling to pay, a court has stated expressly that the jury are in no way bound by the testimony of other attorneys, acting as expert witnesses, to the reasonableness of the fee charged unless they find, from all the evidence, that such expert opinions are correct.[17]

At least one court has wryly taken judicial notice of a certain *esprit de corps* among attorneys which prevents them from interposing any objections to the allowance of counsel fees to one of their number,[18] and another court, in a remarkable outburst of emotion, taxed the local Bar in no uncertain fashion by stating:

> Many attorneys act upon the principle of the French minister, Colbert, who in the matter of taxation always endeavored to pluck as many feathers off the goose as he could possibly pluck, without making the goose squeal. . . .

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[11] McLean v. American Security & Trust Co., 113 F. Supp. 427 (D. C. Dist. Col., 1953); Mabry v. Mudd, 132 Neb. 610, 272 N. W. 574 (1937).

[12] Steckel v. Lurie, 185 F. 2d 921 (6th Cir., 1950), cert. den. 340 U. S. 953, 95 L. Ed. 687, 71 S. Ct. 572 (1951).

[13] American Jewish Joint Distribution Committee v. Eisenberg, 194 Md. 193, 70 A. 2d 40 (1949); Smith v. Kash, 253 Ky. 447, 69 S. W. 2d 980 (1934).

[14] Re Brown's Estate, 67 Ohio L. Abs. 291, 129 N. E. 2d 497 (P. Ct., 1954); mod. on other grounds 98 Ohio App. 297, 129 N. E. 2d 509 (1954).

[15] Mandel v. Curtis, 205 Misc. 856, 131 N. Y. S. 2d 132 (1954).

[16] Re Lewi's Will, 199 Misc. 99, 98 N. Y. S. 2d 279 (1950), aff'd. 278 App. Div. 724, 103 N. Y. S. 2d 74 (1951).

[17] Kittredge v. Armstrong, *supra* note 10.

[18] Buschle v. The Buschle Manufacturing Co., 15 Ohio N. P. (N. S.) 618 (Superior Ct. of Cincinnati, 1913).

> While it may not be known generally, it is well known to the court that it is next to impossible to procure an attorney to testify against another attorney in a claim made by him for his fees. The species of free-masonry which exists among professional men . . . seems to influence them and deter them from testifying against their fellow members whenever a matter of their fees is involved. It is easy to secure the testimony of an attorney to testify as to the reasonable value of another attorney's fees, and the public generally have come to look with distrust and disfavor upon the legal profession because of this attitude on the part of attorneys and their disposition to aid one another in securing as much fees as it is possible to secure from the client.
> Those men who have testified to the very large amount which they have set as the reasonable value of plaintiff's . . . services have not, in the opinion of the court, added anything to their reputations as members of this bar, nor have they, by their conduct, tended to allay the public feeling that does exist against the legal profession.[19]

This statement stands as a unique judicial indictment of its local Bar and as an expression of true concern for the public's apprehension of unrestrained commercialism of legal practitioners.

Judicial Powers of Discipline

There is today no doubt that the power to discipline an attorney at law by means of private or public reprimand, suspension from the practice of law, or disbarment is a power which rests inherently and exclusively in the judicial branch of government.[20] Although the legislative branch may enact statutes which set forth grounds for the discipline of attorneys, as well as procedures by which such discipline is to be administered by the courts, such statutes are to be construed only as aids to the judicial branch, and not as limitations thereupon.[21] The courts,

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[19] Prather v. First Presbyterian Society, *supra* note 5. This case contains a thoroughly instructive review by the court of extenuating circumstances which serve the court as standards applicable to the determination of the attorneys' proper fees.

[20] In Re Nevius, 174 Ohio St. 560, 191 N. E. 2d 166 (1963); Gair v. Peck, 6 N. Y. 2d 97, 188 N. Y. S. 2d 491, 160 N. E. 2d 43 (1959), app. dis. 361 U. S. 374, 4 L. Ed. 2d 380, 80 S. Ct. 401 (1960), mod. on other grounds 191 N. Y. S. 2d 951, 161 N. E. 2d 736 (1959); Mahoning County Bar Association v. Franko, 168 Ohio St. 17, 151 N. E. 2d 17 (1958); Cleveland Bar Association v. Pleasant, 167 Ohio St. 325, 148 N. E. 2d 493 (1958); In Re McBride, 164 Ohio St. 419, 132 N. E. 2d 113 (1956), cert. den. 351 U. S. 965, 100 L. Ed. 1485, 76 S. Ct. 1030 (1956); In Re Thatcher, 80 Ohio St. 492, 89 N. E. 39 (1909).

[21] In Re Nevius, *supra* note 20; In Re McBride, *supra* note 20; In Re Hartford, 282 Mich. 124, 275 N. W. 791 (1937); State Bar Commission Ex Rel Williams v. Sullivan, 35 Okla. 745, 131 P. 703 (1912).

therefore, are entrusted with the power to protect both the interests of society and the integrity of the Bar, through control of the qualifications and performance of individual members of the Bar.

Historically, an attorney at law may be disciplined for misconduct or unprofessional conduct in office which involves moral turpitude, or for conviction of a crime which involves moral turpitude.[22] However, through case law and judicial rules courts have included acts which are contrary to honesty and good morals,[23] and those which bring discredit not only upon the attorney personally but upon his profession and the courts.[24]

As a result of this expansion of judicial control and administration of disciplinary powers, there is now little question that the charging of an unreasonable fee and/or may subject an attorney to disciplinary action. Still, the determination of the reasonableness or unreasonableness of a legal fee is a matter of equivocation and rationalization by the courts. The search for fine legal distinction does not always satisfy a public hungering for an occasional rule of law laid down with the certainty of a Minos[25]—at least when dealing with the determination of a reasonable attorney fee.

Judicial Definition of the Unreasonable Fee

It is a general principle of law that an excessive fee, standing bereft of evidence of fraud, misrepresentation, or moral turpitude, is not alone sufficient ground for disciplinary action against the attorney[26] and this is held to be true even though

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[22] Ohio Revised Code Sec. 4705.02 states "The supreme court, or court of appeals, or court of common pleas may suspend or remove an attorney at law from office or may give private or public reprimand to him as the nature of the offense may warrant, for misconduct or unprofessional conduct in office involving moral turpitude, or for conviction of a crime involving moral turpitude. . . ." See also In Re Bickley, 4 Ohio N. P. (N. S.) 129, 16 Ohio Dec. N. P. 569 (C. P., 1906) for a strict construction of this language.

[23] Stanford v. State Bar of California, 15 Cal. 2d 721, 104 P. 2d 635 (1940).

[24] In Re McBride, *supra* note 20. See also Rule XVIII (5)(a) and Rule XIX, Section 1 of the Rules of Practice of the Supreme Court of Ohio, effective July 1, 1964.

[25] Minos was the legendary son of Zeus (primus inter pares of the mythological Greek gods) and Europa. He was appointed judge of the dead, passing his inexorable final judgment upon their souls.

[26] Re Myrland, 54 Ariz. 284, 95 P. 2d 56 (1939); In Re Woodworth Et Al, 31 Ohio N. P. (N. S.) 107 (C. P., 1933); 7 C. J. S. 23, Attorney and Client.

subsequent events may prove the fee to have been unreasonably large, or the services for which it was exacted unnecessary.[27]

There exist, however, modifications of the terms "excessive" or "unreasonable" fee. A fee which is clearly excessive, or one which is so excessive that it could not possibly have been charged in good faith (therefore, presumably, having been charged in bad faith) will warrant disciplinary action.[28]

An attorney will be subject to such action if his fee for specific services is so excessive and disproportionate in relation to those services as to be oppressive and to the point of extortion.[29]

Further, it is a manifestation of bad faith and misconduct on the part of an attorney if his fee leads to a finding that he clearly intended to overreach his client in the exaction of his fee, which is considered stained with moral turpitude.[30]

Other terms which appear in judicial opinions in an attempt to define unreasonable fee are "unconscionable," i.e. "not guided or controlled by the conscience, and lying outside the limits of what is reasonable or acceptable: shockingly unfair, harsh, or unjust: outrageous," and "exorbitant," defined as that which exceeds "in intensity, quality, force, power, scope, or size the customary, due, or appropriate limits: grossly exceeding normal, customary, fair, and just limits." [31]

Several courts have rejected this sort of semantic equivocation and postulated what is probably a real practical standard: judgment by the court itself. This is well stated by the court in the case of *Goldstone v. State Bar:*[32]

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[27] In Re McCray, 1 Ohio App. 421 (1913); 7 C. J. S. 23, Attorney and Client. In the McCray case, the court approved, without particular comment thereupon, the payment of a fee of $5,000 which had been agreed upon by the attorney and his client for legal services to be rendered in obtaining the return of bank certificates of deposit valued at $26,500, which were owned by the client and in the possession of the bank cashier. The attorney prepared and filed a petition for injunction against the cashier, but the certificates were subsequently returned without action being taken, through the intervention of the bank's attorney and the county sheriff.

[28] State Ex Rel Nebraska State Bar Association v. Richards, 165 Neb. 80, 84 N. W. 2d 136 (1957); State v. McIntyre, 238 Wis. 406, 298 N. W. 200 (1941); Re Myrland, *supra* note 26.

[29] Jackson v. Campbell, 215 Cal. 82, 8 P. 2d 845 (1932); Husk v. Blancand, 155 La. 816, 99 So. 610 (1924).

[30] Re Quinn, 25 N. J. 284, 135 A. 2d 869, 70 A. L. R. 2d 956 (1957); People Ex Rel Chicago Bar Association v. Green, 353 Ill. 638, 187 N. E. 811 (1933).

[31] Webster's Third New International Dictionary Unabridged, *supra* note 1.

[32] *Supra* note 7.

> We are of the opinion that if a fee is charged so exorbitant and wholly disproportionate to the services performed as to shock the conscience *of those to whose attention it is called,* such a case warrants disciplinary action by this court. (Emphasis supplied.)

Other courts have also expressed a preference for this shock-the-conscience doctrine.[33] A fee which has been charged by an attorney as compensation for services and counsel rendered by him to a client will be considered sufficiently unreasonable so as to warrant his discipline if the organized Bar of which he is a member adjudges his fee to be so unreasonable, and if the judgment of the Bar is sustained by the judgment of the courts.

Examples of the Reasonable and Unreasonable Fee

It might be expected that a review of the leading cases in which disciplinary action was either administered or refused by the courts would dispel any lingering confusion and uncertainty as decisively as a rinse cochon[34] dissipates a lingering sabbath eve overindulgence. Such is not the case.

For one thing, there are many instances of disciplinary action against attorneys which to some extent involve a charge of excessive fee setting, but very few in which such a charge is the primary one. In *Lake County Bar Association v. Copperman,*[35] a charge that the attorney extracted exorbitant fees in five specific cases was only one of six counts. In *Cleveland Bar Association v. Fleck,*[36] the court appeared less concerned with excessive fees than with the defendants' ingenious procedure which afforded them fees larger than they were entitled to by special law.

In *Re Reilly,*[37] a two-year suspension from the active practice of law was based upon concealment by attorneys of the fact that the value of bonds which they had accepted in payment of legal fees had appreciated substantially in excess of the agreed-upon fees.

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[33] Re Richards, 202 Ore. 262, 274 P. 2d 797 (1954).

[34] A concoction consisting of two teaspoons of cassis (an alcoholic syrup made from black currants) added to a glass of chilled white wine. This remedy for some reason has failed to gain popularity in the United States equal to that which it enjoys among the inhabitants of Burgundy.

[35] 173 Ohio St. 330, 19 Ohio Ops. 2d 154, 181 N. E. 2d 903 (1962).

[36] 172 Ohio St. 467, 178 N. E. 2d 782 (1961), cert. den. 369 U. S. 861, 8 L. Ed. 2d 19, 82 S. Ct. 948, reh. den. 370 U. S. 914, 8 L. Ed. 406, 82 S. Ct. 1254.

[37] 177 Ore. 584, 164 P. 2d 410 (1945).

In *Goldstone v. State Bar*,[38] a client retained an attorney to assist him in the processing of a claim which he had filed previously with the state Industrial Accident Commission, unaware that his claim had resulted in an award of benefits by the Commission. The attorney examined his client's claim file at the Commission offices, discovered the award, and accompanied his client to the office of the state's insurance carrier, where he provided the identification which enabled his client to collect that portion of his award then due and payable. The attorney charged a fee equal to 40 per cent of the portion of the award collected by his client ($310 out of $882.96), and later attempted to obtain an additional amount. The court ruled that the fee was wholly disproportionate to the services rendered, and that such flagrant overreaching justified the attorney's suspension from the practice of law for three months.

In *Herrscher v. State Bar*,[39] an attorney was charged with collecting a fee of $23,000 for services rendered over a period of seven months, and later claiming additional fees of $50,000 for representing the spouse of his then incompetent client in the spouse's personal capacity as well as in her capacity as guardian of her husband. The California Supreme Court applied precisely the same principles which it had laid down in the preceding *Goldstone* case, but reached the opposite conclusion, holding that although the fees were large and probably excessive, the circumstances of the case did not invoke the rule that the fee was so exorbitant as to shock the conscience of those to whose attention it was called.

In *Re Quinn*,[40] an attorney attempted to collect a fee of $5,000 for recovering property valued at between $18,000 and $33,000 by opposing expert witnesses. The attorney claimed that the sum of $1,000 which he had been paid represented only a portion of a 33⅓ per cent contingent fee, while his client maintained that the $1,000 constituted the entire fee upon which the two had agreed. In approving the attorney's contention, the court reasoned that, even though the client had paid his son $7,000 for the son's alleged share of the disputed property, a true value of only $22,000 (well within the limits established by the expert witnesses) would support the contingent fee contract alleged by

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[38] *Supra* note 7.

[39] 4 Cal. 2d 399, 49 P. 2d 832 (1935).

[40] *Supra* note 30.

the attorney. Furthermore, in such a matter existing doubt must be resolved in favor of the attorney who had 30 years of experience and an unblemished professional record, and who is not likely to have demanded an unconscionable additional fee if he had in fact agreed initially to a fixed fee of $1,000.

The Special Problem of the Contingent Fee

In a series of cases courts show increasing concern over the level of fees charged on a contingent basis, where in many instances both the amount and character of the services by and the results to be anticipated are uncertain at the outset.

In *State v. Barto,*[41] an owner of stock engaged an attorney to negotiate the sale of such stock, after he himself had attempted unsuccessfully to sell it for $2,300. The client was in necessitous circumstances, and the stock represented practically his only property. The attorney disposed of the stock for the sum of $1,200, retaining $600 of the proceeds as his fee. The court branded this fee as extortionate, unfair, unreasonable, and one into which no attorney had a right to enter with a client, and approved the attorney's disbarment.

Several years later, the Illinois Supreme Court ruled that a contingent fee equal to 40 per cent of a $3,000 legacy collected by two attorneys on behalf of needy clients was excessive, but no discipline was ordered in view of the facts that the attorneys were but 22 and 24 years of age respectively, with no previous experience in the collecting of commercial claims, and apparently had acted in good faith in the establishment of the fee.[42]

In 1941, a majority of the judges of the federal District Court for the District of New York expressed the opinion that a 50 per cent contingent fee contract was *ipso facto* oppressive and unreasonable.[43] However, a suspension ordered in the case was not based upon this opinion.

The following year the Supreme Court of Louisiana was presented with a disciplinary action involving similar circumstances.[44] An attorney originally agreed to represent a client for a contingent fee equal to 40 per cent of the amount which

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41 202 Wis. 329, 232 N. W. 553 (1930).

42 People Ex Rel Chicago Bar Association v. Lotterman, 353 Ill. 399, 187 N. E. 424 (1933).

43 Re Chopak, 43 F. Supp. 106 (D. C. N. Y., 1941).

44 Re Novo, 200 La. 833, 9 So. 2d 201 (1942).

might be recovered, but later obtained a second agreement with his client calling for a contingent fee equal to 50 per cent of any eventual recovery, in view of the fact that the case had been before the courts for two and one-half years, had gone to the Court of Appeals twice, and had been before the Supreme Court once on certiorari. The Supreme Court ruled that discipline of the attorney on the charge of establishing an unreasonable fee was unwarranted, because it appeared clearly that the second agreement had been accepted freely and voluntarily by the client. The attorney was suspended for a six-month period on grounds not associated with the charging of fees.

This atmosphere of judicial equilibrium with respect to the ethical propriety of the contingent fee contract, and particularly the 50 per cent contingent fee contract, was shattered by the case of *Gair v. Peck*.[45] The controversy in this case arose over the promulgation and application by the Appellate Division of the Supreme Court of the State of New York for the First Judicial Department of its Rule of Practice No. 4, applicable to the establishment of contingent fees in claims or actions for personal injury or wrongful death. The applicable portion of this Rule provided:

> The receipt, retention or sharing of compensation which is in excess of such scheduled fees [contained in a schedule set forth in another section of the Rule] shall constitute the exaction of unreasonable and unconscionable compensation in violation of Canons 12 and 13 of the Canons of Professional Ethics of the New York State Bar Association, unless authorized by a written order of the court as hereinafter provided.

The fee schedule set forth by the court allowed, without the written approval of the court fees not in excess of either (1) 50 per cent of the first $1,000 of the sum recovered, 40 per cent of the next $2,000, 35 per cent of the next $22,000, and 25 per cent of all sums in excess of the first $25,000, or (2) a sum not exceeding 33⅓ per cent of the total sum recovered, if the initial contract between attorney and client so provides.

In the reviewing court's opinion sustaining the inherent power of the Appellate Division to adopt and enforce the provisions of its Rule 4, it was expressly noted that the plaintiff attorneys questioned neither the reasonableness of the Rule nor the need for such a judicial control over the establishment of

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[45] *Supra* note 20.

contingent fees in those two specific actions to which the Rule applies.

In concluding the preamble to its Rule 4, the court of New York's First Appellate Division expresses its unequivocal opinion that a contingent fee which reaches or approaches a sum equal to 50 per cent of the amount to be recovered ceases to represent a valid measure of compensation and makes the attorney a partner in his client's cause. Such a situation, in the opinion of the court, is neither a permissible professional relationship nor a proper professional practice.

Conclusion

The foregoing review of the problems which beset without favoritism both the inexperienced and experienced legal practitioner in their attempts to set equitable and reasonable fees has presented no solutions, because there are none. An attorney's estimate of the fees which are deserved in recompense for his services and counsel is one of the major criteria by which his clients judge their satisfaction with his efforts. There is a certain quotation which, in its own inimitable way, remains a concise and homely reminder of the problem of the reasonable fee—

> In other professions in which men engage—
> The Army, the Navy, the Church, and the Stage—
> Professional license, if carried too far,
> Your chance of promotion will certainly mar,
> And I fancy the rule might apply to the Bar—[46]

[46] Gilbert, Sir William S., Iolanthe, *supra* note 2.